

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

VALENTIN HERNANDEZ,

Plaintiff,

v.

**SAFECO INSURANCE COMPANY OF
INDIANA AND TIMOTHY DOW
CRAWFORD,**

Defendants.

§
§
§
§
§
§
§
§
§

Civil Action No. **3:15-CV-4016-L**

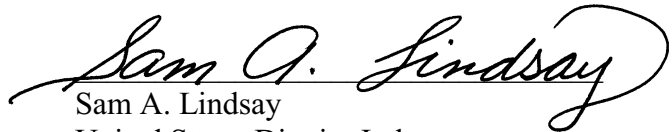
ORDER

Before the court is Plaintiff's Motion to Remand (Doc. 6), filed February 16, 2016; and Defendant Timothy Dow Crawford's Motion to Dismiss Under Federal Rule of Civil Procedure 12(b)(6) ("Motion to Dismiss") (Doc. 5), filed February 2, 2016. On June 27, 2016, Magistrate Judge Paul D. Stickney entered the Findings, Conclusions and Recommendation of the United States Magistrate Judge ("Report"), recommending that Plaintiff's Motion to Remand be denied because Defendant Timothy Dow Crawford ("Crawford") was improperly joined as a defendant in this case, and his citizenship, therefore, should not be considered in the court's jurisdictional analysis. The magistrate judge's determination in this regard is based on the conclusion that Plaintiff's claims against Crawford for violations of the Texas Deceptive Trade Practices Act ("DTPA") and Texas Insurance Code fail as a matter of law. No objections to the Report were filed.

Having reviewed Plaintiff's Motion to Remand, response, pleadings, file, record in this case, applicable law, and Report, the court determines that the findings and conclusions of the magistrate judge are correct, and **accepts** them as those of the court. Accordingly, the court **denies** Plaintiff's Motion to Remand (Doc. 6). Further, for the reasons set forth in the Report, which includes the legal

standard applicable to Rule 12(b)(6) motions, the court determines that Plaintiff has failed to state claims for relief under the DTPA and Texas Insurance Code against Crawford, and Crawford's Motion to Dismiss should be granted.* Accordingly, to avoid further delay, the court **vacates** the order of reference with respect to Crawford's Motion to Dismiss, **grants** Defendant Timothy Dow Crawford's Motion to Dismiss Under Federal Rule of Civil Procedure 12(b)(6) (Doc. 5), and **dismisses with prejudice** Plaintiff's claims under the DTPA and Texas Insurance Code against Crawford. Pursuant to Federal Rule of Civil Procedure 54(b), the court expressly determines that there is no just reason to delay the entry of final judgment in this case as to Defendant Timothy Dow Crawford and **directs** the clerk of the court to enter a final judgment as to him.

It is so ordered this 9th day of August, 2016.


Sam A. Lindsay
United States District Judge

* Although Plaintiff filed a First Amended Complaint ("Amended Complaint") after Crawford moved to dismiss the claims against him, and Plaintiff contends in response to the motion to dismiss that the Amended Complaint cures "any and all defects complained of by [Crawford]," Pl.'s Resp. 1, the court agrees with Crawford's reply and the magistrate judge's determination that Plaintiff's claims against Crawford fail as a matter of law. Thus, even taking into consideration Plaintiff's amended pleadings, the amendment is futile and does save Plaintiff's claims against Crawford for alleged violations of the DTPA and Texas Insurance Code. Moreover, allowing Plaintiff a further opportunity to amend unnecessarily delays resolution of this action with respect to Crawford.